

10. The dynamics of political change and transition: civil society, governance and the culture of politics in Kenya

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People wrongly assume that when you are in government you speak for civil society, yet the dynamics have changed. You have to play by the rules or lose the game. People wrongly assume that the values you had in civil society are the same values you'll continue to exercise in government. But sometimes you are forced to use strategies that people outside might consider underhand, yet the goal you are seeking is justifiable (Lawrence Mute, Commissioner, Kenya National Commission on Human Rights, interview, 2006)

Introduction

Since 1990, substantial changes have taken place in Kenya: the economy has been significantly liberalized, plural politics has taken a firm hold and four relatively successful multiparty elections have been held since 1992.¹ New actors have emerged on the scene, greatly changing the architecture of power. Civil society organizations (CSOs), broadly defined to include non-governmental organizations (NGOs), churches, professional bodies, grassroots organizations and trade unions, have been instrumental in the push for political reform. Notwithstanding their lack of homogeneity (Ngunyi, 1996), NGOs, churches and professional bodies have been central in fashioning the intellectual arguments at the heart of CSO mobilization. In the second half of the 1980s, leadership was provided by church organizations. Between 1989 and 1991 it passed to professional associations, and was then – from 1992 onwards – appropriated by NGOs (Nzomo, 2003). In the first multiparty elections, held in 1992, some civil society leaders were elected to parliament, but they managed to retain a strong and active presence in and membership of CSOs, effectively straddling the government and CSO spheres.²

Even though democratization and good governance have formed the overall defining agenda for civil society struggles, their form, style and focus have continually changed. Activities have ranged from simple calls and agitation for minor constitutional reform to allow the reintroduction

of multiparty politics, to a mass push for a complete constitutional overhaul. Civil society has also shifted away from its hitherto cardinal and sacred principle of 'non-partisanship', taking sides in electoral contests and openly courting the support of voters – and thus moving from the mere provision of civic education to direct political mobilization.

In this chapter, I seek to assess the effect that civil society has had on improving the culture of governance in Kenya – by which I mean the values, conduct, institutions and structures of political life. I will look, in particular, at the aftermath of the 2002 general elections, when many civil society actors became part of the government for the first time.³ I will argue that the culture of politics before this time was largely regressive, undemocratic, unresponsive and unaccountable, and that the *raison d'être* for civil society to intervene (whether as educator, competitor or mobilizer) was to reverse this situation. This orientation is explicit and implicit in the work of various CSOs and, particularly, NGOs, which, in Michael Bratton's terms, 'help to pluralise the institutional environment and promote a democratic political culture ... [as they help to] reconstruct state–civil society relations along democratic lines' (1989: 568). This is a view shared by many (Pietrowski, 1994; Nyangoro, 1999); but it has also been aggressively contested by others, such as Stephen Ndegwa (1996), who, in examining two Kenyan NGOs, argues that the actions of civil society are not necessarily democratizing. He suggests that they exhibit tendencies towards 'benevolent personal rule' and 'personality politics', and, because of a lack of proper institutionalization, that organizational actions correlate strongly with the preferences and actions of individual leaders. CSOs thus become merely 'resourceful platforms for the elite who are not immune to entrenched interests (such as class or ethnicity)' (1996: 5) and are therefore incapable of improving on the culture of governance and politics.

Bratton and Ndegwa provide us with an analytical spectrum through which to assess the contribution of civil society to improving the culture of politics and governance in Kenya. In this chapter, I take the view that, whereas the notion of civil society is broad (and the actors within it many and diverse), there is a category of civil society that – whether because of the advantages of 'learned' leadership, the ability to command resources or a high level of institutionalization – has been more visible in reform politics. It is from this high-profile category that the political establishment has actively recruited. I do not equate civil society with these elite groups, but I do recognize the significant influence that they have had in transforming Kenyan politics.

Civil society: between agency and structure

During the era of active political mobilization, civil society actors have taken the view that both structure and agency have been the cause of poor governance. Consequently, both of these notions have been the focus of civil society interventions. In the early part of the 1990s, a greater emphasis was placed on the importance of agency,⁴ while the importance of changing structure gained prominence in the late 1990s, as expressed through the constitutional reform struggles of that time.

The agency argument assumed a managerial view of the decay of governance and politics in Kenya, positing that a 'change of guard' was the best cure for the existing governance malaise, as characterized by a leadership that was innately undemocratic and unaccountable, and that privileged personal survival, rather than performance, as a basis for legitimacy. The agency argument was also supported by the nascent opposition parties in 1992 which, convinced of their imminent victory in the elections, believed that a focus on constitutional reform would only allow the incumbent Kenya African National Union (KANU) to prolong its hold on power and delay the task of replacing bad state managers. It came as a surprise to them that KANU used a defective constitutional order not only to win the elections but significantly to frustrate efforts to improve the culture of politics and governance in Kenya for the next ten years (Mutunga, 1999).

The 'structural school', on the other hand, argued that the poor state of governance in Kenya was a function of weak and poorly designed systems and institutions. While agency was important, it ceased to be sufficiently important as a factor, especially in terms of expanding the democratic space as rapidly as the structural school felt was desirable. Its advocates insisted on institutional and constitutional reform as necessary preconditions for an improvement in the culture of politics and governance. As long as institutions such as the electoral commission, parliament, the judiciary and the executive remained unreconstructed, they argued, even new agents would find it difficult to behave differently (*ibid.*).

Codifying the reform agenda: issues for civil society intervention

Informed by the realities surrounding structure and agency, civil society interventions were powered by two objectives: institutional reform and reform of the values of both leaders and citizens. Continued state authoritarianism and unaccountability were seen as a consequence of citizens being deliberately kept in ignorance of their rights (and so unable to exercise or lay claim to them) – hence the civic education initiatives. Similarly, state institutions had been seriously undermined